

ORDER SHEET
BEFORE THE ELECTION APPELLATE TRIBUNAL FOR SINDH AT SUKKUR
(Before Mr. Zulfiqar Ali Sangi)

Election appeal No.S-43 of 2024

Muhammad Zuhaib Shaikh v. Deedar Ali and others

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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For hearing of main case

Date of hearing 09.01.2024

Date of decision 10.01.2024

Mr. Muhammad Haseeb Jamali and Mr. Ali Gul Abbasi,
Advocates for appellant.

Mr. Muhammad Zubair Malik, Advocate for respondent No.1.

Mr. Zeeshan Hyder, Law Officer, Election Commission of
Pakistan.

Mr. Dareshani Ali Hyder 'Ada' DAG.

Mr. Muhammad Umair Election Officer Sanghar
representative of Election Commission of Pakistan.

Mr. Ghulam Ali Tunio Returning Officer NA-200 (Sukkur-I)

ORDER

Zulfiqar Ali Sangi J;- Through this Election Appeal, the appellant has challenged the impugned order dated 25.12.2023, mistakenly mentioned in memo of appeal as 26.12.2023, passed by the Returning Officer NA-200 Sukkur-I whereby nomination form of the respondent No.1, was accepted. The appellant has not filed any objection before the Returning Officer nor he was available at the time of scrutiny as required under section 62 (4) of the Election Act, 2017 which provide that “The Returning Officer shall, in the presence of persons attending the scrutiny, examine the nomination papers and decide any objection raised by any such person to any candidature”. The right of appeal is also provided only to the candidate or the objector under section 63 (1) of the Election Act, 2017 which provides “ A candidate or the objector may, within the time specified by the Commission, file an appeal against the decision of the Returning Officer rejecting or accepting the nomination paper to an Appellate Tribunal constituted for the constituency consisting of a person who is a Judge of High Court appointed by the Commission in consultation with the Chief Justice of High Court concerned. However, Section 63 (4) of the Election Act, 2017 provided suo-moto jurisdiction to be invoked by the Appellate Tribunal if is satisfied that the candidate is actually a defaulter or has had a loan

written off or suffers from any disqualification, it may reject the nomination paper. Today the counsel for the appellant place on record the copy of adjournment application filed by the appellant before the returning officer alongwith the statement and tried to convince that the appellant attended the scrutiny proceedings, but the Returning Officer submit that such application was filed after the order for acceptance of nomination form was passed such denial also required evidence which cannot be undertaken summarily. The appellant has also not been able to show any tangible material for exercising a sou-moto jurisdiction. It is observed that the appeal is to be decided summarily in view of Section 63 (2) of the Election Act, 2017 as the Election Tribunal has been constituted for a limited purpose in terms of Section 63 of Election Act, 2017 and is not an Election Tribunal form in terms of Section 140 of the Election Act, 2017. The difference is to be kept in mind, as any order of Election Tribunal in respect of allegation and, acceptance of nomination form cannot be equated with an order or decision/judgment of Election Tribunal constituted in Terms of Section 140 of the aforesaid Act, for deciding the Election Petition. Learned counsel for Election Commission of Pakistan and learned DAG have also supported the order of Returning Officer and prayed for dismissal of appeal.

2. In the light of above, the returning officer has rightly accepted the nomination form of respondent No.1, and the order passed by Returning Officer is hereby maintained. The appeal stands dismissed.

J U D G E